

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

HALEY EQUIPMENT, INC.
Carroll County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2008-AQ- 45
NO. 2008-SW- 31

TO: Tom Haley, Registered Agent
Haley Equipment, Inc.
19504 Highway 30 West
Carroll, IA 51401

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Haley Equipment, Inc. (Haley Equipment) for the purpose of resolving the air quality and solid waste disposal violations which occurred at Haley Equipment in Carroll, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Keith Wilken, Field Office #4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted

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pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Haley Equipment is a farm implement dealer located at 19504 Highway 30 West in Carroll, Iowa. On July 30, 2008, DNR Field Office 4 received a complaint alleging that Haley Equipment burns trade waste south of its main building.

2. On August 12, 2008, Keith Wilken, DNR Field Office 4 environmental specialist, conducted a complaint investigation at Haley Equipment. Mr. Wilken met with Alan Kraus, Haley Equipment employee. During the investigation, Mr. Wilken observed a large open burn/open dump site south of the main building. The open burn/open dump site contained burned remnants of tires, lumber, pallets, cardboard boxes, tree and tree trimmings, chemical containers, signs, garbage bags, a mattress, mattress box springs, a plastic sandbox, and metal fragments. Following the inspection, Mr. Wilken spoke to Tom Haley on the telephone regarding the findings of the investigation. Mr. Wilken explained the open burning and solid waste disposal regulations to Mr. Haley.

3. On August 13, 2008, Haley Equipment was issued a Notice of Violation letter for the open burning and solid waste disposal violations discovered during DNR's investigation. The letter required that all solid waste, including the ash, at the Haley Equipment facility be removed and disposed of properly at a permitted landfill by September 15, 2008 and that the landfill receipts be submitted to Field Office 4 by September 30, 2008. The letter also required that Haley Equipment submit a compliance plan to Field Office 4 detailing how the facility would dispose of the solid waste in the future. The compliance plan was required to be submitted by September 30, 2008. The letter informed Haley Equipment that the matter was being referred for further enforcement.

4. On September 15, 2008, Mr. Haley informed DNR legal staff that the solid waste had been removed and properly disposed of.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Field Office 4 personnel observed various types of solid waste, including tires, had been burned at Haley Equipment's facility. The above facts demonstrate noncompliance with this provision.

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3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The solid waste at Haley Equipment was burned or was going to be burned rather than disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Haley Equipment agrees to do the following:

1. If not already completed, Haley Equipment shall immediately submit a copy of the landfill receipts to Field Office 4;
2. If not already completed, Haley Equipment shall immediately submit a compliance plan to Field Office 4 detailing how the facility will dispose of its solid waste; and
3. Haley Equipment shall pay a penalty of \$1,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant Iowa Code section 455B.146A. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$1,000.00. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - Failure to follow the proper solid waste disposal regulations by the improper open burning and disposal of the solid waste has allowed Haley Equipment to save time and money. Haley Equipment has saved time, effort, and landfill fees by not properly disposing of the solid waste. Based on the above considerations, \$100.00 is assessed for this factor.

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Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Based on the above considerations, \$600.00 is being assessed for this factor.

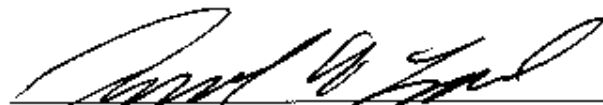
Culpability – Haley Equipment has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Based on the above considerations, \$300.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Haley Equipment. For that reason, Haley Equipment waives the right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 7 day of
Oct, 2008.



HALEY EQUIPMENT, INC.

Dated this 28 day of
September, 2008.

Barb Stock (Con 10-6 Carroll County); Kelli Book; Field Office 4; V.I.C and VII.C.1.